

PRELIMINARY STEPS FOR CIVIL APPEALS: INFORMATION HANDOUT

The following information has been prepared by the APPELLATE COURT COMMITTEE of the SAN DIEGO COUNTY BAR ASSOCIATION to assist counsel in avoiding common mistakes in processing an appeal. THIS IS NOT AN OFFICIAL COURT DOCUMENT AND IS NOT INTENDED TO BE RELIED UPON AS A SUBSTITUTE FOR THE RELEVANT STATUTES AND RULES. The purpose of this document is to serve as a reference to important statutes and rules that might affect your appeal. It is not designed as an exhaustive treatment of appellate procedure. For answers to specific questions, the following reference guides provide helpful information regarding appellate practice and procedure: (1) The California Court of Appeal, *Step by Step*, (<http://www.courtinfo.ca.gov/courts/courtsofappeal/4thDistrictDiv1>); (2) California Civil Appellate Practice (Cont.Ed.Bar 3rd ed.); (3) Eisenberg, et al., California Practice Guide: Civil Appeals and Writs (The Rutter Group 2003); (4) 9 Witkin, California Procedure (4th ed. 1997) Appeal.

The notice of appeal, designation, and certification of the record on appeal are governed by California Rules of Court, rules 1 through 12.5 and 18. These rules must be followed in order to perfect an appeal and a record on appeal.

The appeals section of the superior court is responsible for processing the notice of appeal, preparing the record on appeal, and certifying the record to the Court of Appeal. Pleadings relating to these procedures are filed with the appeals section of the downtown superior court located at 220 West Broadway, Room 3005. However, pleadings regarding appeals of cases from the North County Division in Vista, located at 325 South Melrose Drive, Suite 1000, are filed there. The complete addresses and telephone numbers for these offices appear below.

For those interested in associating special appellate counsel, the Lawyer Referral and Information Service of the San Diego County Bar Association (619-231-8585) maintains a panel of experienced appellate attorneys.

I. NOTICE OF APPEAL

A. Jurisdictional Time Limits (Rules 2, 3):

1. The time in which to file a notice of appeal is set by rule and is jurisdictional. The Court of Appeal has no power to relieve a party from default for failing to file a timely notice of appeal and must dismiss the appeal. (Rules 2(b), 45(e).)
2. Normally, the time for filing a notice of appeal is the shorter of:
(1) 60 days after service of notice of entry of judgment or appealable order; or (2) 180 days after entry of the judgment or appealable order. (Rule 2(a).) However, many circumstances can complicate

this seemingly simple formula. Counsel should carefully review rules 2 and 3 and case law to assure the notice of appeal is timely.

- B. Appeal Only from an Appealable Order (See, e.g., Code Civ. Proc., § 904.1 [other statutes may make other orders appealable]): Appeal remedies are statutory; only certain orders or judgments may be appealed. Before filing a notice of appeal, counsel should ascertain whether the appeal is being taken from an appealable order or judgment. If an order or judgment is not immediately appealable, counsel may consider whether appellate review should be sought through a petition for a writ of mandate.
- C. Filing and Service of the Notice of Appeal (Rule 1(a)(1)-(3)):
1. The party filing a notice of appeal must serve the signed notice on other parties to the appeal. (Rule 1(a)(1).) The notice of appeal is filed with the clerk of the superior court (rule 1(a)(1)) and the clerk gives notice of the filing to the parties and the reviewing court. (Rule 1(d)(1)-(3)). If a notice of appeal is combined with a designation of the clerk's transcript, an election to proceed by appendix, and/or a designation of the reporter's transcript, any designation or election also must be served on all parties. (Rules 4(a)(1), 5(a)(1), 5(a)(2), 5.1(a)(1) & 5.1(a)(2).)
 2. In San Diego County, the notice of appeal should be filed with the appeals section of the downtown superior court for appeals from the Central Division, East County Division and South County Division. Appeals from the North County Division, located in Vista, must be filed in that court.
- D. The Required \$655 Filing Fee (Rules 1(b), (c)): A notice of appeal must be accompanied by a \$655 filing fee. A check or money order should be made payable to the "Clerk, Court of Appeal" for this amount, but the check or money order should be delivered to the superior court. (Rule 1(b)(1).) If the appellant is indigent, payment of the filing fee may be excused upon application under rule 985. (Rule 1(b)(2).)
- E. The Required \$100 Non-Refundable Fee for the Clerk's Transcript (Gov. Code, § 68926.1): A \$100 deposit for the clerk's transcript must also be paid when the notice of appeal is filed. It must be presented in a separate check payable to the "Clerk of the Superior Court." (Rule 1(b)(2).) However, if the notice of appeal contains an election to proceed by appendix under rule 5.1, the \$100.00 deposit is not required in San Diego County. Other counties may demand this fee.

II. DESIGNATION OF RECORD ON APPEAL

- A. Designation of the Record Within 10 Days of Filing of the Notice of Appeal: The appealing party must serve and file its designation of the record on appeal or election to proceed by appendix within 10 days of filing

its notice of appeal. (Rules 4(a)(1), 5(a)(1), 5.1(a)(1).) An appellant who does not want transcription of any oral proceedings must also serve and file a notice of intent to proceed without a reporter's transcript. (Rule 4(a)(1).)

B. Clerk's Transcript (Rule 5):

1. A notice designating a clerk's transcript must state the date the notice of appeal was filed. (Rule 5(a)(4).)
2. Pursuant to rule 5(a)(4) and local superior court practice, parties requesting a clerk's transcript under rule 5 must list each requested document by title, accurate description and date of filing with the superior court. Failure to do so will cause the designation request to be returned. It may also cause default under rule 8(a). The parties may specify that portions of designated documents (e.g., specific pages or exhibits that are duplicated elsewhere in the record) be omitted from the record. (Rule 5(a)(4).)
3. Within 10 days after service of the appellant's notice of designation of the clerk's transcript, the respondent may counter-designate documents not designated by the appellant for inclusion in the clerk's transcript. (Rule 5(a)(3).)

C. Reporter's Transcript and Deposit of Estimated Cost (Rule 4):

1. Pursuant to rule 4(a)(4), parties requesting preparation of a reporter's transcript must state the date the notice of appeal was filed and specify the date the proceedings took place. Local superior court practice further requires the name of the reporter, the number of the department and the nature of the proceedings. The designating party must serve the notice designating the reporter's transcript on each reporter whose identity is known. (Rule 4(a)(6).) If a party fails to specify the proceeding by date, the designation request will be returned. Such failure may also cause a default under rule 8(a). The designating party may specify portions of designated proceedings that are not to be included in the transcript. (Rule 4(a)(4).) If less than all of the testimony is designated, the notice must state the points to be raised on appeal. (Rule 4(a)(5).) The appeal is then limited to those points unless, on motion, the reviewing court permits otherwise. (Rule 4(a)(5).) A party cannot exclude portions of a witness's testimony unless the parties so stipulate. (Rule 4(e)(2).)
2. A notice to prepare the reporter's transcript must be accompanied by a deposit of the approximate cost of the transcript (\$325 for proceedings not over three hours and \$650 per day for proceedings over three hours or an amount pursuant to written estimate by the reporter) and a notice of deposit pursuant to rule 4(b)(1). However, instead of a deposit, the party may substitute the reporter's written

waiver of the deposit, a copy of a Transcript Reimbursement Fund application filed under rule 4(c)(1), or a certified transcript of the designated proceedings. (Rule 4(b)(3).) Where the reporter waives the deposit for and the party provides a certified transcript of a part of the designated proceedings, the waiver or transcript replaces the deposit for only that part. (Rule 4(b)(3).)

3. Within 10 days of service of appellant's notice designating a reporter's transcript, the respondent may designate any additional proceedings to be included in the transcript. (Rule 4(a)(2).) If the respondent orders transcripts not ordered by the appellant, the respondent must deposit the approximate cost of preparing those additional portions of the transcript and file a notice of deposit. (Rule 4(b)(1), (3).)
4. If the appellant does not order a transcript of any oral proceeding, the respondent is precluded from ordering a transcript. However, the reviewing court, on its own motion or upon motion by the respondent, may order the record augmented to include the reporter's transcript to prevent a miscarriage of justice. (Rule 4(a)(3).)
5. On request, the reporter must provide any party with a copy of the reporter's transcript in a computer-readable format, unless the superior court orders otherwise. (Rule 4(f)(4).) Costs and procedures are set out in Code of Civil Procedure section 269, subdivisions (a) and (c), and Government Code sections 69950 and 69954.

D. Rule 5.1 Election:

1. Any party may elect to proceed by appendix rather than by clerk's transcript. However, within 10 days of filing the notice of appeal, the electing party must serve and file the notice of election in the superior court. The notice must state the date the notice of appeal was filed. (Rule 5.1(a)(1).) Documents to be included need not be enumerated in the election.
2. A reporter's transcript may still be ordered if the parties proceed by appendix. A party may combine a notice of election with a notice designating a reporter's transcript under rule 4(a)(1), and may combine both with the notice of appeal. (Rule 5.1(a)(2).)
3. An appendix must not include documents or portions of documents that are not necessary for proper consideration of the issues raised in the appeal. (Rule 5.1(b)(2).) Also, it must not include transcripts of oral proceedings that may be made part of the reporter's transcript. (Rule 5.1(b)(3).)

4. A joint appendix or an appellant's appendix must be served and filed with the appellant's opening brief. (Rule 5.1(e)(2).) A respondent's appendix, if any, must be served and filed with the respondent's brief, while an appellant's reply appendix, if any, must be served and filed with the appellant's reply brief. (Rule 5.1(e)(3), (4).)

E. Exhibits, Depositions:

1. Although all exhibits, whether admitted, refused or lodged, are deemed part of the clerk's transcript, a party wanting an exhibit copied in the transcript must specify that exhibit by number or letter in its notice of designation. If the superior court has returned a designated exhibit to a party, the party in possession of that exhibit must promptly deliver it to the superior court clerk. (Rule 5(a)(5).)
2. Similarly, all exhibits admitted in evidence or refused are deemed part of the rule 5.1 appendix, regardless of whether the appendix contains copies of them. (Rule 5.1(b)(5).) Rule 5.1(c) outlines the process to be followed by a party preparing an appendix who wants it to contain an exhibit in the possession of another party.
3. A party who wants the Court of Appeal to consider original exhibits that were admitted in evidence, refused or lodged, must serve and file a notice in superior court designating such exhibits within 10 days after the last respondent's brief is filed or could have been filed under rule 17. (Rule 18(a)(1).) Within 10 days of that notice, any other party who wants the Court of Appeal to consider additional exhibits must serve and file a like notice in superior court designating such exhibits. (Rule 18(a)(2).) These designation notices must be served on the Court of Appeal. (Rule 18(a)(3).) Within 20 days of the first designation notice, the superior court clerk shall send the exhibits to the Court of Appeal. (Rule 18(b)(1).) Any party possessing designated exhibits returned by the superior court must put them into numerical or alphabetical order and forward them to the Court of Appeal with two copies of the list of exhibits sent. (Rule 18(b)(2).)
4. Depositions cannot be copied in the clerk's transcript, nor can the originals be transmitted by the clerk to the Court of Appeal, except by stipulation or order of the reviewing court. (Rule 5(b)(4).) Portions of depositions read in open court and reported, regardless of whether received into evidence, are transcribed in the reporter's transcript if designated.

F. Who Pays the Cost of the Record:

1. Clerk's Transcript: The appellant pays the entire cost of the clerk's transcript, even when respondent has counter-designated portions of the transcript. When the clerk's transcript is complete, the appellant

receives a copy and the original is forwarded to the Court of Appeal. (Rules 5(c)(1), (2), 5(d)(1) & 11(a)(1).)

2. Reporter's Transcript: As discussed above, each party pays for the portion of the reporter's transcript that party designates. When the transcript is complete, appellant receives a copy and the original is forwarded to the Court of Appeal. (Rules 4(b), (f) & 11(a)(1).)
3. Multiple Appeals: If more than one appeal is taken from the same judgment or related order, only one appellate record need be prepared. Such record must be filed within the time permitted for filing the record in the latest appeal. Unless otherwise agreed by the appellants or ordered by the superior court, the separately represented appellants equally share the cost of preparing an original record for the Court of Appeal and each is entitled to a copy. (Rule 10 (a)(1), (2).)

G. Respondent's Copy of the Record:

The respondent does not automatically receive a copy of the record. A respondent who wants a copy of a clerk's or reporter's transcript must request one promptly. The superior court clerk is required to give each party notice of the estimated cost to prepare a copy of the clerk's transcript for that party's use. (Rule 5(c)(1).)

H. Lending The Record

If a party does not procure its own copy of the record, that party may borrow the other party's copy if the former notifies the latter not more than 20 days after the record is filed in the Court of Appeal. (Rule 11(b)(1).)

III. CIVIL CASE INFORMATION STATEMENT

- A. Appellants and cross-appellants must serve and file separate Civil Case Information Statements in the Court of Appeal within 10 days after the Court of Appeal clerk mails notice that the Statement is due and a copy of it to an appealing party. A copy of the judgment or appealed order showing the date it was entered must be attached to the completed Statement. (Rule 1(f)(1), (2).) In order to comply with this requirement, the court recommends that the copy of the judgment or appealed order be signed and file-stamped. Part III of the Statement further requires the attachment of a list of all parties and all their attorneys of record who will participate in the appeal. The filing of the Statement is required in all civil cases except appeals from juvenile dependency proceedings.
- B. If an appealing party fails to timely file a Civil Case Information Statement, the Court of Appeal clerk must notify the party by mail that the Statement must be filed within 15 days after the clerk's notice is mailed and that failure to comply will result in either the imposition of monetary sanctions

or dismissal of the appeal. If the appealing party fails to comply with the notice, the Court may impose sanctions as specified in the notice. (Rule 1(f)(3).)

IV. CORRECTION OF RECORD ON APPEAL

- A. Corrections Made in the Court of Appeal: On the court's own motion, a party's motion or a stipulation, the Court of Appeal may order the correction or certification of any part of the record. Also, it may order the superior court to settle disputes regarding omissions or errors in the record. (Rule 12(c).) However, where a clerk or reporter omits a required or designated part of the record, a party may serve and file a notice in superior court specifying the omitted material and requesting that it be prepared, certified and forwarded to the Court of Appeal. The party must serve a copy of that notice on the Court of Appeal. (Rule 12(b)(1).)
- B. Augmentation Requests With Documents Attached : At any time, the Court of Appeal, on its own motion or that of a party, may order the record augmented to include any document filed or lodged in the case in the superior court or a certified transcript, or an agreed or settled statement, of oral proceedings not designated under rule 4. (Rule 12(a)(1).) The party moving to augment the record must attach a copy of the matter to be added, unless unavailable. Where the matter is unavailable, the party must identify it as required under rules 4 and 5. (Rule 12(a)(2), (3).)

V. FILING OF RECORD ON APPEAL

- A. Once the record on appeal is complete, the superior court clerk transmits the original to the Court of Appeal. (Rule 11(a)(1).)
- B. Once the record is filed, any further matters involving the record, except clerk or reporter omissions (see rule 12(b)(1)) and corrections of clerical error, must be filed with the clerk's office for the Court of Appeal, Fourth Appellate District.
- C. The filing of the record triggers the time for filing opening briefs. (Rule 15(a).)

VI. OBTAINING MORE INFORMATION AND PERTINENT ADDRESSES AND TELEPHONE NUMBERS

- A. The Court of Appeal maintains a comprehensive internet web site containing case information (except on confidential cases), oral argument calendars, opinions (published and unpublished), local rules, frequently asked questions, practices and procedures, biographies of the court's justices and extern program information. The web site can be accessed at: **<http://www.courtinfo.ca.gov/courts/courtsofappeal/4thDistrictDiv1>**. A copy of a handout entitled "Basic Appellate Procedures", which answers frequently asked questions about procedure after the record is filed, is

forwarded to all parties after the notice of appeal is filed and the case has been assigned an appellate case number.

B. Pertinent Addresses and Telephone Numbers:

1. Clerk, Appeals Section
San Diego County Superior Court
Central Division
P.O. Box 120128
220 West Broadway, Room 3005
San Diego, CA 92112-0128
(619) 531-3144
2. Clerk, Appeals Section
San Diego County Superior Court
North County Division
325 South Melrose Drive, Suite 1000
Vista, CA 92081-6643
(760) 806-6170
3. Clerk of the Court
Court of Appeal
Fourth Appellate District, Division One
750 B Street, Suite 300
San Diego, CA 92101-8196
(619) 645-2760

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